



05-2803

446.022

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
DIU-HERCEND et al
Serial No.: 09/674,109
Filed: June 21, 2001
For: METHOD ...S.CERVISIAE

G. Leffers

Group: 1636

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May 27, 2003

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Commissioner for Patents
P.O. Box 1450
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Sir:

Responsive to the office action of April 28, 2003, Applicants request reconsideration of the application in view of the remarks presented herein.

The claims in the application are claims 13 to 28, all other claims having been cancelled.

The Examiner has required a four-way restriction requirement, group I includes claims 13, 15, 16 and 18 to 28, group II includes claims 13, 14, 16, 17 and 19 to 28, group III includes claims 13, 15, 16, and 18 to 28 and group IV includes claims 13, 14, 16, 17 and 19 to 28. Each of the four groups are alleged to be drawn to an in vitro or in vivo assay for screening anti-mycotic substances using a particular essential gene selected from a Markush group of such essential genes.

The Examiner goes on to state that there is not a single generic inventive concept since the claims lack the same corresponding special technical features because the special technical feature of each method is the combination of the particular gene or gene product along with the particular assay conditions. The Examiner alleges that assays done in vitro or in vivo comprise technical features not required for assays done in the other environment such as purification of the target component and deems that restriction is proper.

Applicants respectfully traverse this ground of rejection since it is deemed that there is a generic concept set forth in the claims which are all properly examined together, namely, using a method for screening of an anti-mycotic functionally similar mycete gene of a Markush group thereof and all of the steps are the same with only this gene being different. Therefore, it is deemed that there is a single inventive concept and all of the claims should be examined together in the same application. However, in order to be fully responsive to the Examiner's restriction requirement, Applicants elect group III or as indicated by the Examiner in the office action, groups 181 to 270, namely, claims 13, 15, 16 and 18 to 28. The election being made with traverse and a request for reconsideration by the Examiner.

Since the first office action was merely a restriction requirement, Applicants request a prompt examination on the merits.

Respectfully submitted,
Muserlian, Lucas and Mercanti



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CAM:ds
Enclosures